BEFORE THE

PUBLIC SERVICE COMMISISON OF SOUTH CAROLINA

DOCKET NO. 2017-321-E

In Re:	)	
	)	
Whitetail Solar, LLC; Rhubarb One LLC; Cotton Solar, LLC; and Shorthorn Holdings, LLC,	)	**Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Response in Opposition to Motion to Maintain Status Quo**
Complainants/Petitioners,	)	
v.	)	
Duke Energy Carolinas, LLC and Duke Energy Progress, LLC,	)	
Defendants/Respondents.	)	

Pursuant to 26 S.C. Code Ann. Regs. 103-829(A) and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"), Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke Energy" or the "Companies") hereby respond in opposition to Complainants Whitetail Solar, LLC; Rhubarb One LLC; Cotton Solar, LLC; and Shorthorn Holdings, LLC's ("Complainants") Motion to Maintain Status Quo, filed on October 16, 2017. Duke Energy respectfully requests that the Motion to Maintain Status Quo (the "Motion") be denied for the reasons explained below.

BACKGROUND

On August 31, 2017, 28 solar qualifying facility ("QF")[1] project limited liability companies ("Solar QF Project LLCs") owned by Southern Current LLC, Adger Solar, LLC, National Renewable Energy Corporation, and Ecoplexus, Inc. (the "Solar Developers") filed a complaint ("Docket No. 2017-281-E Complaint") against DEC and DEP, assigned as Docket No. 2017-281-E. The Solar Developers allege that Duke Energy's offer to enter into power purchase agreements ("PPAs") with the Solar Developers' Solar QF Project LLCs at the Companies' fixed forecasted avoided capacity and energy rates over five-year terms violates the Public Utility Regulatory Policies Act of 1978 ("PURPA").

As directed by the Commission, on October 16, 2017, Duke Energy answered the Docket 2017-281-E Complaint, responding that DEC and DEP have fully satisfied their obligations under PURPA, Federal Energy Regulatory Commission ("FERC") regulations and precedent, and South Carolina law and precedent, and have acted in good faith, by offering to purchase the output of the Complainants' proposed solar generation projects—in aggregate, more than 1,150 megawatts ("MW") of new solar capacity—at rates calculated based upon the Companies' fixed forecasted avoided capacity and energy costs over five year terms.

Also on October 16, 2017, the Complainants—four solar QF[2] project limited liability companies owned by Birdseye Renewable Energy (the "Birdseye Solar QF Project LLCs") and represented by the same counsel as the Solar Developers—filed an essentially identical complaint against DEC and DEP (the "Docket No. 2017-321-E Complaint"). On that same day, Complainants also filed consolidated motions (1) moving the Commission to consolidate this

[1] The Solar QF Project LLCs assert in the Docket No. 2017-281-E Complaint that they are certified as QFs under PURPA (Compl. ¶ 2), but the Companies are without sufficient information to verify this claim for all of the complainants in that docket.

[2] The Docket No. 2017-321-E Complaint asserts that Complainants are certified as QFs under PURPA (Compl. ¶ 2), but the Companies have not verified this claim.

docket with Docket No. 2017-281-E; and (2) "mov[ing] this Commission to maintain the status quo between the Complainants and the Duke [s*ic*], as of October 16, 2017."

On October 20, 2017, the undersigned counsel submitted a letter to the Commission's Chief Clerk stating that Duke Energy does not object to consolidating the proceedings brought by all thirty-two Solar QF Project LLCs, provided that the schedule for prefiling testimony and the hearing date currently in place in Docket No. 2017-281-E is not affected.

ARGUMENTS

I. The Requested Relief Lacks Sufficient Specificity, Factual and Legal Support, and, Therefore, Should Be Denied.

As a threshold matter, Complainants' relief requested lacks sufficient specificity, factual and legal support, and, therefore, should be denied. The Commission's procedural rules require all pleadings, including motions, to provide the Commission a "concise and cogent statement of facts" and a "statement identifying the specific relief sought by the person filing the [motion]." 26 S.C. Code Ann. Regs. 103-819(C)-(D). The South Carolina Rules of Civil Procedure ("S.C.R.C.P.") similarly require a motion to "state with particularity the grounds therefor, and . . . the relief or order sought." S.C.R.C.P. § 7(b)(1).

The four-sentence Motion fails to provide any reasonable specificity regarding the underlying facts or the relief requested that would permit Duke Energy—or the Commission—to identify what is meant by "maintain[ing] the status quo between the [parties] as of October 16, 2017." Complainants state that "several Contract deadlines . . . will expire on, and after, this date" and suggest that Complainants, therefore, "need to preserve their Contract rights and their queue positions," as of October 16, 2017. The Motion fails to identify any specific contracts, corresponding rights or deadlines at issue, much less why they merit preservation. The Motion also appears to conflate "queue positions" as provided for under the Commission-approved

South Carolina Generator Interconnection Procedures ("SC GIP")[3] with certain unspecified "Contracts."

Moreover, Complainants fail to "state with particularity the grounds" for the relief Complainants request, as required by the S.C.R.C.P. Complainants provide only a handful of unsupported allegations and conclusory statements as "grounds" for the Motion, alleging Duke Energy's actions are in "bad faith" and "designed to help Duke [Energy] reduce or purge its queue." Completely unrelated to the instant proceeding, and, again, without any underlying facts or evidence, Complainants also allege that "Duke's queue is not in compliance with guidelines." The Motion provides no facts or any documentation to support these allegations. Complainants also fail to offer any cogent explanation of the relationship between the unfounded allegations and the ambiguous requested relief. Nor does the Motion set forth a single citation to pertinent authority, rules, or guidelines of any kind.

Complainants' complete disregard for the pleading requirements of the Commission and the S.C.R.C.P. deprives Duke Energy of its due process rights to fair notice of the specific relief sought, and Complainants' failure to set forth any facts or law supporting their request warrants denial of this Motion.

II. The requested relief is unnecessary, given Duke Energy's legal obligations under PURPA to the Birdseye Solar QF Project LLCs.

Notwithstanding Complainants' failure to state any basis for the Motion, the Motion also fails to recognize that the DEC and DEP remain obligated under PURPA to offer contracts to purchase the Birdseye Solar QF Project LLCs' output, irrespective of either the existence of this

[3] *See Order Adopting Interconnection Standard and Supplemental Provisions*, Order No. 2016-191, Docket No. 2015-362-E (Apr. 26, 2016) (defining "Queue Position" in SC GIP Attachment 1 as "[t]he order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, based on Queue Number.").

proceeding or the outcome of the Motion.[4] Indeed, the rights and obligations set forth in PURPA and FERC's implementing regulations inherently "protect [the Complainants'] Contract rights," with respect to PPAs under PURPA. The Complaint in no way jeopardizes the Complainants' right to contract for the sale of energy and capacity with Duke Energy under PURPA. DEP has offered Complainants — like all other comparable QFs — a negotiated avoided cost PPA for a five-year term. This negotiated PPA, which has already been delivered to Complainants, is the "status quo" for all QFs ineligible for Schedule PP. Indeed, Complainants executed and accepted the terms of these PPAs on October 16, 2017. Accordingly, the Motion should be denied as moot.

The Complainants' allegations and request as to "queue position" are also irrelevant to the subject of underlying proceeding, which is specific to the five-year term PPAs the Companies offer QFs pursuant to PURPA. The Complaint does not mention any allegations as to the Companies interconnection queues; in fact, the queue is not mentioned even once in the Complaint. Further, to the extent Complainants take issue with Duke Energy's interconnection processes, Section 6.2 of the SC GIP requires any such dispute to be brought initially through its informal dispute resolution procedures, which Complainants have failed to do here.

In addition to the fact that queue positions are simply not at issue in this proceeding and, therefore, cannot be the subject of any relief granted to Complainants, it would be improper for the Commission to extend special treatment to the Birdseye Solar QF Project LLCs in a manner that would discriminate against and harm others in the queue. In compliance with the SC GIP, DEP is currently processing the Birdseye Solar QF Project LLCs' Interconnection Requests in queue priority order along with approximately 174 other proposed utility-scale generating

[4] *See* 18 C.F.R. 292.303(a).

facility projects seeking to interconnect approximately 2,810 MW to the DEP transmission and distribution systems in South Carolina. Three of the four Birdseye Solar QF Project LLCs are currently "interdependent" with other later-queued interconnection requests that would be adversely impacted and delayed if Complainants were allowed to hold their queue positions without proceeding through the study process while they elect whether to execute an interconnection agreement or withdraw.[5] Allowing special treatment of the Birdseye Solar QF Project LLCs in any way would be to the detriment of other later-queued Interconnection Customers' requests in the DEP interconnection queue, and, accordingly, Complainants' request to "preserve . . . their queue positions" should not be granted.

The "status quo" is that Duke Energy must continue making reasonable efforts to move forward with the generator interconnection study process under the SC GIP and proceed with studying all interconnection requests, including Complainants, on a non-discriminatory basis in queue priority order. To do otherwise, would be discriminatory and unfair to other interconnection customers, particularly those with interdependent interconnection requests.[6] Because the Motion, to the extent comprehensible, seeks discriminatory treatment to the detriment of others in the interconnection queue or is otherwise moot, it should be denied in its entirety.

[5] Duke Energy offers to provide the Hearing Officer with more detailed information concerning the positioning of the Birdseye Solar QF Project LLCs and the impact of granting Complainants' requested relief to other interdependent interconnection customers, upon request. And should the Hearing Officer be inclined to grant Complainants any relief pursuant to the Motion, Duke Energy requests an opportunity for hearing on the Motion.

[6] Duke Energy acknowledges that in some instances the Companies have allowed an interconnection customer to hold its queue position during the brief pendency of an informal dispute, as set forth in SC GIP Section 6.2. As is demonstrated in that section, such informal disputes are resolved in an expedited manner. It is not the Companies' practice, nor would it be reasonable, to preserve queue positions of interconnection customers once they are involved in formal Commission proceedings, as indicated by the filing of a formal complaint with the Commission.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Duke Energy requests that the Motion be denied.

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